



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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May 12, 2009

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Three Rivers Management
Beazer East, Inc.
One Oxford Center, Suite 3000
Pittsburgh, PA 15219-6401

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ENFORCEMENT CONFERENCE SUMMARY

Thank you for meeting with the Department of Natural Resources staff on May 5, 2009 to discuss the Notice of Violation that was sent to you on April 20, 2009. This summary concerns the property located at 9100 South 5th Avenue, Oak Creek, Wisconsin. If you are not in agreement with the summary of this meeting, please send a letter describing your concerns to my attention at the above address.

MEETING SUMMARY

In attendance: Michael Tischuk, Paul Kline (Beazer East); Mike Noel (Geotrans), Darsi Foss, Kathleen Strasbaugh, Eric Amadi, Pat Chung, and Toni Revane (DNR).

Agreement

By Tuesday, May 19, 2009:

- If Beazer East does not intend to move forward in conducting the ch. NR 716, Wis. Adm. Code site investigation, it will submit a letter notifying the Department of its decision.
- If Beazer East submits information about other persons that have previously owned the property and may have environmental liability under Wisconsin law, DNR will pass it on to the former owners.

By Tuesday, June 2, 2009:

- A ch. NR 716, Wis. Adm Code, scope of work plan will be submitted to the Department by if Beazer East intends to move forward.

Discussion

Pat Chung thanked Michael Tischuk, Paul Kline and Mike Noel for attending the meeting. She explained that the goal of the conference was to reach an agreement to begin the remedial process at the site, establish deadlines, and facilitate conversation with DNR technical staff.

Darsi Foss stated that the site is still considered a brownfield site, and is eligible for state and federal incentives. She advised to get the site cleaned up while funds are still available.

Michael Tischuk asked what the environmental issue is, and why Vulcan was not at the table. Foss said Department records indicated that Vulcan had addressed releases they caused while operating at the site. Eric Amadi and Foss said that there were numerous groundwater and soil exceedances at the site that have not been adequately addressed and that based on the information available to the DNR at this time, are not attributable to Vulcan. These need to be investigated and addressed. As one example, Foss provided pictures of tar oozing up through the parking lot.

Paul Kline stated that all parties responsible need to be pulled in and then Beazer will move forward. Foss stated that, according to the file, Vulcan responded to the discharges they caused, and those they reported as being of a historic nature. She asked if Beazer has evidence that Vulcan caused more discharges, or that Vulcan had exacerbated existing, historic discharges. Tischuk stated that a former employee had indicated that Vulcan had caused more discharges.

Amadi stated that if it is Beazer's position that Vulcan caused the same impact or made it worse, then Beazer needs to provide proof of this. Chung stated that a Notice of Violation cannot be issued on anecdotal evidence. Foss said that if Beazer provides evidence to the Department in writing, the Department will submit this to Vulcan. Kline stated that Beazer needs to firm up evidence and find the Levin and Padek Trusts (the "Trusts"), who purchased the site from Koppers, and then sold the property to Vulcan Materials, Inc. Foss requested that any information about the Levin Trust include an explanation as to the "association" the Levin Trust may have had with Koppers, Inc.

Tischuk stated that Beazer is not willing to do site investigation work. Kline requested 90 days to do research to prove Vulcan's liability and find Padek and Levin. Foss stated that Beazer has had a year since the RP letter was sent in April, 2008 requesting that the site investigation work plan be submitted by June 9, 2008. Beazer responded in September, 2009 that a work plan would not be submitted. Tischuk said that he had thought that letters had been sent to Vulcan, Connell Ltd Partnership (dba Wabash Alloys) and Levin Trust during this time. Kline stated that the other parties are more responsible. Foss stated that waiting another 90 days does not serve the State's best interest.

Tischuk stated that property was sold to and the Trusts, "as is". Vulcan bought the property "as is", and the time limit from Vulcan's indemnity to Wabash was exceeded. Kathleen Strasbaugh stated that the discharge is ongoing. It doesn't matter how many parties are involved as long as someone takes responsibility. She explained that the Department will notify the parties who are responsible for the discharge if they can be located, but has no obligation to go after everyone. Further, the Department is under no obligation to honor private indemnifications between persons.

Paul Kline said that if Beazer East does not intend to move forward, the company will send a letter verifying their decision to the Department within two weeks. Otherwise, they will submit a site investigation /scope of work plan to the Department within 30 days. Chung said that if Beazer does not move forward within 30 days, Department staff will meet to discuss further enforcement action.

Foss stated that the Department would like to work with Beazer to resolve this matter.

If you have any questions please contact Pat Chung at (414) 263-8663, or Eric Amadi at (414) 263-8639.

Sincerely,

A handwritten signature in cursive script that reads "Toni Revane".

Toni Revane
Environmental Enforcement Associate

Cc: Eric Amadi, SER
Jim Schmidt, SER
Darsi Foss, RR/7
Kathleen Strasbaugh, Attorney LS/5